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OFFICE OF:
THE GOVERNOR
THE SECRETARY
THE TREASURER

PHONE: 213-0027

May 15, 1970

Confidential Claim Retracted
Authorized by: SC
Date: 6/25/13

Honorable Walter Hickel
Secretary of the Interior
Washington, D.C. 20000

Dear Secretary Hickel:

On November 28, 1962, the Pueblo of Laguna executed an Agreement with the Anaconda Company, whereby the Pueblo agreed to allow Anaconda to lease additional acreage for the mining of uranium and minerals associated therewith in return for an increased royalty rate for uranium produced on land leased subsequent to June 1, 1962. A copy of this Agreement is attached hereto as Exhibit A. Among other things, this Agreement provides that in the event, subsequent to December 31, 1966, the Pueblo and Anaconda are unable to agree on what constitutes the reasonable market value of crude uranium ores, then and in that event, the Secretary of the Interior may establish reasonable minimum values for the purpose of computing crude ore values for royalty computation purposes. These particular provisions are included in Exhibit A, in the second and third paragraphs on Page 4.

Following a study of our presently producing mining lease with Anaconda, together with amendments thereto. and also after due consideration to the economics of the uranium industry, the Pueblo determined that Anaconda had not, since January 1, 1967, paid royalties to the Pueblo on a true realistic market value of the crude uranium ore at the mine. On February 23, 1970, a letter was written to Anaconda stating the Pueblo's position and making demand upon Anaconda for a recomputation and payment of balance due from January 1, 1967 to date, together with a demand that future royalties be paid on the basis of reasonable market value of the ore. Anaconda has, since prior to December 31, 1966, used Atomic Energy Domestic Uranium Circular 5, revised, as the basis for its computation of crude ore value. A copy of the letter to Anaconda, marked Exhibit B, is attached. The Pueblo did not ask for an increase in royalty rates; only that the existing royalty rate be based upon a reasonable crude ore value at the mine.

On March 25, 1970, Anaconda responded to the letter of February 23, 1970, stating that it did not believe our differences could be resolved by direct negotiation, that no purpose would be served by a meeting between the Pueblo and The Anaconda Company and that our rights were recognized to initiate procedures set forth in the Agreement of November 28, 1962. A copy of Anaconda's letter is attached, marked Exhibit C.

Since January 1, 1967, Anaconda has paid royalties based on ore values computed by using the pricing schedule set forth in the Atomic Energy Commission Domestic Uranium Program Circular 5, revised, which expired March 31, 1962, (and excluding from such pricing schedule allowances for transportation and development of ores). A copy of this Circular 5 pricing schedule is attached as Exhibit D.

In view of Anaconda's stated position and refusal to negotiate, the Pueblo of Laguna hereby requests, pursuant to the terms of the said Agreement, that your office establish reasonable minimum values for the purpose of computing crude ore value under the agreement and leases entered into thereunder.

It is the Pueblo's contention that there is only one reasonable basis to determine the true market value of uranium ores mined from its lands. This basis is that the market value of ore at the mine is determined by the market value, (sales price), of the uranium concentrate (U_3O_8) derived from such ores less deductions for transportation from the mine to the mill and for the cost of treating the ore and producing U_3O_8 concentrate therefrom.

Our contention, as expressed above, is based on the following conclusions:

1. That the value of minerals contained in crude ore in the absence of well established, independent and meaningful posted field prices must be determined by reference to the value of mineral products derived from such ores.

2. That the value of crude ore changes as the market value of mineral products derived therefrom changes.

3. That the true economic values of mineral products relate back to the raw mineral source rather than to standardized mechanical and chemical treatment processes as in the uranium industry.

4. That uranium concentrate products have been, are now and will in the future be, sold in a reasonably free and independent market.

5. That in the same general area, i.e., the Grants, Ambrosia Lake and Laguna uranium district, an independent and meaningful posted field price does not exist due to the economic control of captive reserves by the mill operators and the lack of significant production by independent operators.

6. That in arriving at a "crude ore value" at the mine, the mine and mill operator is entitled to deduct from the market value of products derived from such ores its cost of transporting the ore to the mill and its cost of processing or treating the ores to obtain the marketable product, U_3O_8 concentrate.

7. That our contended method of valuing ore at the mine is consistent with the original mining lease dated March 27, 1952, which is attached as Exhibit E and which states on Pages 3 and 4 that under circumstances such as have been in effect since March 31, 1962, just such a method would be used.

8. The United States Geological Survey, by letter dated October 17, 1969, directed to the Commissioner of Indian Affairs, has agreed with the position taken by the Pueblo. A copy of said letter is attached as Exhibit K. The theoretical basis for the U.S.G.S. definition of crude ore value under the lease is the same as the Pueblo is presenting in this letter.

The market value of ore can only be reflected by the value of products derived therefrom. This is a fact recognized by purchasers of both ores and ore reserves in place. Any mine operator looks to the sales price or expected future sales prices of the minerals less the costs of production, development, exploration and acquisition to determine any project feasibility. Since the Laguna royalty is based on "Crude Ore at the Mine" the market value at the mine must be determined by reference to the sales price of products derived from the ore, less a deduction for those additional costs of placing the mineral product into a marketable form, U_3O_8 concentrate. The only additional costs between the mine and sale of the products are transportation and milling or treatment of the ores in producing the concentrate. Assuming that treatment and transportation costs remain the same, the crude ore value at the mine must change as the price of the mineral product changes. Exhibit J attached, illustrates this changing effect on value and royalty on Laguna historical ore grade ore together with a comparison of Circular 5 ore value and royalties.

The Circular 5, (Exhibit D), pricing schedule as used by Anaconda in its computation of ore value since January 1, 1967, had an industry basis prior to March 31, 1962. Prior to that time, Circular 5 was used for determination of ore value in both direct ore purchases by the A.E.C. and in determining the prices to be paid individual mill contractors for concentrate purchases. Circular 5 expired on March 31, 1962. Thereafter, the A.E.C. purchased concentrate from all contractors at a price of $8.00 per pound. Concentrate purchases continued through 1968 at $8.00 per pound but for 1969 and 1970, A.E.C. concentrate purchase prices were lowered to an amount determined by reference to actual costs of production plus a profit factor for each mill, the maximum price being $6.70 per pound. Additional data is presented in letter dated February 20, 1969, from Raford L. Faulkner, Director, Division of Raw Materials, A.E.C., to Mr. David Jones, attached as Exhibit F. Additional data concerning the Uranium Industry is presented as Exhibit G.

Use of Circular 5 pricing schedule for Laguna lease ore value computation was (by specific agreement) in effect through December 31, 1966, (reference Exhibit A). Circular 5 pricing schedule as used by Anaconda did not, however, reasonably reflect the value of crude ore at the mine, during the period from April 1 or November 28, 1962, through December 31, 1966 at a price of $8.00 per pound for concentrate. A schedule showing this discrepancy in

Circular 5 from reasonable ore values is attached as Exhibit H.

We are unable to determine the exact amount of additional royalties due the Pueblo of Laguna by Anaconda for ores mined since January 1, 1967, since we do not know the prices received for U_3O_8 concentrates produced and sold nor do we know Anaconda's milling costs. Based on estimated selling prices and milling costs, we have estimated that the total amount due us (by application of our formula in determining crude ore value to mine production during 1967, 1968 and 1969) will range between $1,500,000 and $2,300,000.

The Pueblo does not have at its disposal the actual cost of milling and treatment of ores in the Anaconda mill. It is our understanding however, that these costs have been audited by the A.E.C. through 1968 for purposes of arriving at A.E.C. stretch-out concentrate purchase prices during 1969 and 1970. We have been advised by Anaconda that transportation costs have been 84¢ per ton (from the mine to the mill). Verified milling and treatment costs should be readily available and the Pueblo hereby asks that your office obtain such verification. Likewise, actual uranium sales prices should be furnished by Anaconda.

There is no independent market for uranium ores in the "crude ore state" in the Laguna-Grants-Ambrosia Lake area. While there are currently three uranium mills operating in this area, only one mill purchases ore from independent producers. Independent operator ore comprises 2% or less of the ores processed in the area. It is also understood that the price paid for ores from independent producers is a negotiated price with each separate independent producer. The exact prices and circumstances surrounding independent ore purchases by the United Nuclear-Homestake Mill, which does purchase some independent ore in the district, is considered by United Nuclear-Homestake as proprietary information and is not available on request.

While the Pueblo does not have access to Anaconda's federal income tax returns, it is our understanding that all operators in the uranium industry having captive mine-mill operations take the position for purposes of computing statutory depletion for tax purposes that the uranium concentrate (U_3O_8) is the first marketable product and as such constitutes the gross income depletion base. We are certain that inspection of Anaconda's income tax returns will verify this. Since statutory or cost depletion relates strictly to the mine or mineral property, <u>not to a processing plant</u>, we contend that Anaconda's income tax treatment of its mining revenues will be in agreement with our contended method of valuation of crude ore at the mine.

Payment of royalties based on crude ore valued under our contended method will place no economic hardship on Anaconda. We do not know Anaconda's actual production costs. However, it can be reasonably expected that open pit mining costs might range between $2.00 to $5.00 per ton and that future underground costs might range between $7.00 and $12.00 per ton. These costs when deducted together with royalties from "Market Value of Ore at Mine", as shown on Exhibits H or J, will leave a very adequate per ton profit margin. We do not know what their capital investment is nor how their operating profits relate thereto. We understand that certain of Anaconda's long term concentrate sales commitments have been about the lowest priced in the industry and must from that assume that their production costs are the most favorable.

In summary, the Pueblo of Laguna herewith requests that you establish a "minimum crude ore value" for uranium ores mined from Laguna leases since January 1, 1967, and for those to be mined in the future. We have, in the foregoing paragraphs, together with attached exhibits, presented the pertinent data needed by you for making a judgment in this matter. In particular we would like to redirect your attention to Exhibit J which shows the unreasonable results derived from use of Circular 5 pricing schedule in a free market situation. We should also like at this time to direct your attention to Exhibit K, the letter dated October 17, 1969, to the Commissioner of Indian Affairs from Frank E, Clark, Acting Director of U. S. Department of Interior, Geological Survey, previously referred to, wherein on Page 3 he defines "Crude Ore Value" identically to our definition.

As you can appreciate, this matter is of great financial and economic importance to the Pueblo of Laguna and its tribal members. We expect that in one way or another, monies derived from a correct crude ore valuation will all go toward further development and advancement of our reservation lands and its people. We are certain that with your realization of the importance of this matter to us that you will also realize that time is of much importance.

Your office has long recognized the necessity of establishing proper values for the purpose of the government receiving adequate royalties from the public lands. This has been recognized and encouraged by the Courts. United States v. Southwest Potash Corporation 352 F.2d 113; California Co. v. Udall, 296 F.2d 384; Continental Oil Co. v. United States, 184 F.2d 802; United States v. Ohio Oil Co., 163 F.2d 633. As the trustee for the Indian Tribes and particularly the Pueblo of Laguna, you certainly have no less responsibility to protect the resources of the Pueblo, to encourage and assist in the development of its lands, and to insure that the development of these lands results in the proper monetary return to the Pueblo. The redefinition of crude ore value in accord with our recommendations will result in a proper monetary return to the Pueblo.

Your assistance in expediting this matter will be greatly appreciated by our Pueblo and its people.

Very truly yours,

Tom Dailey, Governor
PUEBLO OF LAGUNA

Please send copies of all correspondence to the following:

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